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EXAMINER

JAGAN, MIRELLYS

ART UNIT

PAPER NUMBER

2855

MAIL DATE

DELIVERY MODE

03/11/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over the reference titled "Finding Termites With Thermal Imaging Cameras" by James et al [hereinafter James] in view of U.S. Patent Application Publication 2003/0146840 to Donskoy et al [hereinafter Donskoy].

James discloses a method comprising:

using a thermal imaging camera to receive a thermal image of a residential structure (house) to detect moisture carried by termites at an at least one site;

wherein said thermal image is received without prior electromagnetic radiation of the residential structure; the structure is heated or cooled (by the termites); and the thermal image is a cold spot (see section 1; section 2, last paragraph, lines 3-5; and section 6, paragraph 1, line 1, paragraph 2, lines 2-3).

James does not disclose positioning at least one detector at said at least one site to nondestructively confirm termite infestation in said at least one site in said structure; or confirming that there is an active termite infestation in the sites by using a microwave motion

Art Unit: 2855

detector.

Donskoy discloses a method of reliably detecting the presence of termites in a wooden residential structure by using a microwave motion detector to nondestructively detect movement of the termites in the structure. Donskoy teaches that it is desirable to perform the test on a wood residential structure and on wood poles to test the structural integrity of the wooden structures (see paragraphs 22-24).

Referring to claim 1, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the method of James by further using a microwave motion detector to detect the presence of termites, as taught by Donskoy, in order to determine if there are termites in the identified site, thus confirming that there is a termite infestation in the site.

Response to Arguments

3. Applicant's arguments with respect to the claims have been considered but are not persuasive.

Regarding applicant's arguments that James is undated, the date of James is 8/1/02. Another copy of James is attached (see last page of James).

Applicant's arguments that James fails to disclose looking for cold spots are not persuasive since James explicitly discloses looking for cold spots in section 2, paragraph 1, lines 3-4 ("A color image shows hot spots as red or yellow and cold spots as blue or purple and these heat patterns indicate termite infestations." [emphasis added]); and section 6, paragraph 2, lines

2-3 ("Termites also control their thermal environment by building moist mud structures, which can show up on thermal imaging equipment as cool spots in a wall cavity.")

With respect to applicant's arguments against the references individually, i.e., that James fails to disclose using a secondary confirmation, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, the claims were rejected over James in view of Donskoy, not James alone.

Conclusion

4. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 2855

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mirellys Jagan whose telephone number is (571) 272-2247. The examiner can normally be reached on Monday-Friday from 12PM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Lefkowitz can be reached on (571) 272-2180. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gail Verbitsky/
Primary Examiner, Art Unit 2855

MJ
February 27, 2008